

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROGER JORDAN

Claimant

VS.

LEARJET, INC.

Respondent
Self-Insured

)
)
)
)
)

Docket No. 202,490

ORDER

Claimant requests review of the Preliminary Hearing Order entered by Administrative Law Judge Shannon S. Krysl on September 20, 1995.

ISSUES

The Administrative Law Judge denied claimant's request for benefits because of lack of timely notice. Claimant requests this review. The sole issue before the Appeals Board is whether claimant gave timely notice of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purpose of preliminary hearing the Appeals Board finds as follows:

- (1) The Appeals Board has the jurisdiction and authority to review this Preliminary Hearing Order pursuant to K.S.A. 44-534a.
- (2) The Order of the Administrative Law Judge should be reversed. Under the unique facts of this case, the Appeals Board finds claimant gave timely notice of accident.

Claimant has a long history of back problems. He was diagnosed with degenerative disc disease in 1991, if not before. Claimant would experience back pain which would wax and wane. From time to time, claimant would take leaves of absence from work when he experienced symptom flair-up. At approximately 8:30 a.m. on May 3, 1995, claimant was lifting a wooden lid with three co-workers and felt a sharp pain in his hip. Claimant did not initially think the incident was serious. At 1:00 p.m. that same day, claimant mentioned to his supervisor his back was hurting because he had lifted something he probably should not have. At that point their conversation was interrupted and the supervisor left the area to attend an urgent matter. Claimant worked the next day and told his supervisor that morning that he would not be able to travel to the other plants because of his back pain. The second day after the lifting incident, May 5, 1995, the claimant reported to work, but left early when he was not able to tolerate his back pain. Because his supervisor was not available, claimant notified his manager of his leaving. The manager did not inquire why claimant's back was hurting.

The weekend passed and claimant's wife called in on Monday to advise that claimant could not work. On Tuesday, claimant called his supervisor to advise he could not work and also asked for a leave of absence. The following day, May 10, the claimant saw Dr. Robert L.

Eyster, who wanted additional studies and restricted claimant from working. Claimant had a follow-up visit with Dr. Eyster on May 15. At that time Dr. Eyster wanted an MRI because claimant had developed increased pain going down into the leg. The MRI study showed claimant had a ventral extradural defect at L4-5 and herniation at L5-S1 obliterating the left lateral recess that had not been present with earlier MRI studies.

Based on these facts, the Appeals Board finds claimant notified respondent of his injury on the day it happened. Although claimant did not provide the specific detail he was lifting a wooden lid when the incident occurred, he told his supervisor he had lifted something he probably should not have. The conversation occurred during midday when claimant had been working for several hours. From that conversation, the supervisor should have reasonably assumed claimant was referring to a lifting incident that occurred at work.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl entered in this proceeding on September 20, 1995, should be, and hereby is, reversed; that claimant has provided timely notice of accident; and that this case should be, and hereby is, remanded to the Administrative Law Judge for further proceedings consistent with this Order.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Paul V. Dugan, Jr., Wichita, Kansas
Edward D. Heath, Jr., Wichita, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director